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Sunset Review
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October 18, 2005

MEMORANDUM TO: Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

FROM: Gary Taverman
Acting Deputy Assistant Secretary
for Import Administration

SUBJECT: Issues and Decision Memorandum for Preliminary Results of Full
Sunset Review of the Countervailing Duty Order on Brass Sheet
and Strip from France

Summary

We have analyzed the substantive responses and rebuttal comments of interested parties in the full sunset review of the countervailing duty (“CVD”) order on brass sheet and strip from France. We recommend that you approve the positions we have developed in the “Discussion of the Issues” section of this memorandum. Below is the complete list of the issues in this full sunset review for which we received substantive responses by parties.

1. Likelihood of continuation or recurrence of a countervailable subsidy
2. Net countervailable subsidy likely to prevail
3. Nature of the subsidy

History of the Order

On March 6, 1987, the Department of Commerce (“the Department”) published in the Federal Register the CVD order on brass sheet and strip from France. See Countervailing Duty Order; Brass Sheet and Strip from France, 52 FR 6996 (March 6, 1987). The Department found two programs countervailable: Government Equity Infusions and Other Financial Assistance to Trefimetaux (“TMX”), and Certain Financing from Credit National. The net countervailable subsidy determined was 7.24 percent ad valorem.

Since the investigation, the Department has completed one sunset review of the CVD order. See Final Results of Expedited Sunset Review: Brass Sheet and Strip from France, 64 FR

48369 (September 3, 1999) (First Sunset Review). No administrative reviews of the order have been conducted.

On September 3, 1999, the Department published in the Federal Register a notice of final results of the first five-year sunset review of the countervailing duty order on brass sheet and strip from France, pursuant to section 751(c) of the Tariff Act of 1930, as amended (“the Act”). See First Sunset Review, 64 FR 48369. As a result of that review, the Department determined that revocation of the CVD order would be likely to lead to continuation or recurrence of a net countervailable subsidy of 7.24 percent ad valorem. In accordance with 19 CFR 351.218(e)(4), the Department published a notice of continuation of the order based on its affirmative findings by both the Department and the International Trade Commission (“ITC”). See Continuation of Antidumping Duty Orders and Countervailing Duty Orders: Brass Sheet and Strip From Brazil, Canada, France, Italy, Germany, and Japan, 65 FR 25304 (May 1, 2000).

Background

On April 1, 2005, the Department initiated a sunset review of the CVD order on brass sheet and strip from France pursuant to section 751(c) of the Act. See Notice of Initiation of Five-Year (“Sunset”) Reviews, 70 FR 16800 (April 1, 2005). The Department received a notice of intent to participate from the following domestic interested parties: Heyco Metals, Inc. (“Heyco”); Olin Corporation – Brass Group (“Olin”); Outokumpu American Brass (“Outokumpu”); PMX Industries, Inc. (“PMX”); Revere Copper Products, Inc. (“Revere”); Scott Brass (“Scott”); the International Association of Machinists and Aerospace Workers; United Auto Workers (Local 2367 and Local 1024); and United Steelworkers of America (AFL/CIO-CLC) (hereinafter, collectively “domestic interested parties”), within the deadline specified in 19 CFR 351.218(d)(1)(i). The domestic interested parties claimed interested party status under sections 771(9)(C) and (D) of the Act, as domestic brass mills, rerollers, and unions engaged in the production of brass sheet and strip in the United States.

The Department received substantive responses from the domestic interested parties as well as from Gravograph Industrie International (“Gravograph”); Trefimetaux, S.A. (“TMX”); and the Government of France (“GOF”). On May 24, 2005, after analyzing the substantive and rebuttal responses of interested parties, consistent with 19 CFR 351.218(e)(1)(ii)(A) and (C), the Department determined to conduct an expedited review of this countervailing duty order on the basis that the two respondent companies, Gravograph and TMX, accounted for less than 50 percent of the exports of subject merchandise from France to the United States during the sunset review period.

Subsequently, the GOF and the European Union (“EU”) requested that the Department reconsider its adequacy determination on the basis that the customs data concerning imports (U.S. data) and exports (French data) do not reliably reflect the actual volume of imports of brass

sheet and strip.¹ On June 10, 2005, domestic interested parties submitted a letter reiterating earlier comments asserting that the French respondents failed to submit all of the required information in their responses and failed to satisfy the 50-percent export threshold set forth in the regulations. Thus, according to domestic interested parties, the Department's determination to conduct an expedited review was correct and should be maintained.

On June 14, 2005, the Department met with representatives from the EU and the GOF to discuss their request that the Department reconsider its decision to conduct an expedited review in the instant case.² On July 11, 2005, the GOF provided additional information concerning the statistics on French brass sheet and strip and again requested that the Department reconsider its adequacy determination. On July 13, 2005, the EU expressed its support for the GOF's request for a full sunset review noting that, in view of the manifest discrepancies in the various sources of data, for which the GOF has been pro-active in trying to find a solution, it would be wrong to deny all the parties a full and comprehensive investigation of the facts. Finally, on July 14, 2005, the domestic interested parties reiterated the view that the Department should conduct an expedited sunset review in this proceeding arguing that no justification exists for the Department to reverse its earlier conclusion.

The Department reconsidered its original determination, and, on August 12, 2005, determined to conduct a full review of this order, as provided for at section 751(c)(5)(A) of the Act and at 19 CFR 351.218(e)(2).

The Department determined that the sunset review of the CVD order on brass sheet and strip from France is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). (See section 751(c)(6)(C) of the Act.) Therefore, on July 27, 2005, the Department extended the time limit for the completion of the final results of this review until not later than October 28, 2005, in accordance with section 751(c)(5)(B) of the Act. See Brass Sheet and Strip from Germany, Brazil, and France: Extension of Final Results of Expedited Sunset Review of the Antidumping and Countervailing Duty Orders, 70 FR 43395 (July 27, 2005). However, when the Department determined to conduct a full sunset review of this order, the preliminary results of the full sunset review were extended until October 18, 2005.

Discussion of the Issues

In accordance with section 751(c)(1) of the Act, the Department is conducting this review to determine whether revocation of the CVD order would be likely to lead to continuation or

¹ See letters of June 8, 2005, and June 9, 2005, respectively.

² See June 16, 2005, Memorandum to the File, From Kelly Parkhill, concerning the Sunset Review of the Countervailing Duty Order on Brass Sheet and Strip from France.

recurrence of a countervailable subsidy. Section 752(b) of the Act provides that, in making this determination, the Department shall consider the net countervailable subsidy determined in the investigation and any subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy have occurred that are likely to affect that net countervailable subsidy. Pursuant to section 752(b)(3) of the Act, the Department shall provide to the ITC the net countervailable subsidy likely to prevail if the order were revoked. In addition, consistent with section 752(a)(6) of the Act, the Department shall provide to the ITC information concerning the nature of the subsidy and whether the subsidy is a subsidy described in Article 3 or Article 6.1 of the 1994 WTO Agreement on Subsidies and countervailing Measures (“SCM”).

Below we address the substantive responses and rebuttal comments of interested parties.

1. Likelihood of Continuation or Recurrence of Countervailable Subsidy

Interested Parties’ Comments

Domestic interested parties assert that revocation of the CVD order would likely result in the continuation of countervailable subsidization of brass sheet and strip in France. In their substantive response, domestic interested parties argue that in the first sunset review (1999), the Department determined that revocation of the CVD order on brass sheet and strip from France would likely lead to the continuation of subsidies at the same levels established in the original investigation. Moreover, domestic interested parties argue that there appears to be no indication that the French government’s subsidy programs have been modified or eliminated. Therefore, they assert that it can be reasonably concluded that revocation of the order would result in continued subsidization from the GOF.

TMX and Gravograph state that, with respect to the programs found countervailable in the original investigation, the programs have been either formally terminated with no remaining benefits, or, by their nature, no longer confer any benefits on TMX and Gravograph.

The GOF argues that the likelihood of continuation or recurrence of subsidization is zero. The GOF asserts that the situation of the French brass sheet and strip industry has changed since the time of the original investigation, including the sale of TMX. Specifically, Credit National no longer exists and all of its “special loans,” found countervailable in the original investigation, have been extinguished well before the initiation of this sunset review. Moreover, the GOF argues that current EU rules ensure that no new subsidies could have been given to the brass sheet and strip industry in France since 1995. Additionally, the GOF points out that all the programs countervailed in the original investigation have been terminated and are not likely to be reinstated. With respect to the 1983 - 1985 equity infusions provided to TMX, the GOF explains that based on the 14-year average useful life calculated by the Department, any benefits would have been fully allocated since 1999.

In their rebuttal comments, domestic interested parties argue that the respondents' claims that the subsidy programs have ended should be dismissed. Domestic interested parties state that the Department cannot overlook or underestimate the importance of respondents' failure to request an administrative review of this order. They also argue that by waiting until the second sunset review to make their claims, respondents have precluded the Department from conducting a full, factual examination of the accuracy and reliability of their claims, as explicitly contemplated by the Department's Sunset Policy Bulletin.³

Department's Position

We agree with domestic interested parties that revocation of the order would likely lead to continuation or recurrence of countervailable subsidies on the subject merchandise in France. In accordance with section 752(b)(1) of the Act, in determining whether revocation of a CVD order would be likely to lead to continuation or recurrence of a countervailable subsidy, the Department will consider the net countervailable subsidy determined in the investigation and subsequent reviews, and whether any change in the program which gave rise to the net countervailable subsidy determined in the investigation and subsequent reviews has occurred that is likely to affect that net countervailable subsidy.

In the instant case, there have not been any administrative reviews of the order. Based on the information from the original investigation, we can conclude that the benefits from the non-recurring government equity infusions and other financial assistance to TMX have been fully allocated prior to the initiation of this sunset review and no longer provide a countervailable benefit.

With regard to the loan program, the Department determined during the investigation that certain financing from Credit National, a bank the Department found was under the effective control of the GOF, provided a benefit to producers of subject merchandise in France. The Department has not been provided with substantial evidence to support a finding that this benefit to producers has changed. Therefore, we preliminarily find that there is likelihood of continuation or recurrence of a countervailable subsidy were the order to be revoked.

2. Net Countervailable Subsidy Likely to Prevail

Interested Parties' Comments

The domestic interested parties argue that in determining the subsidy rates that are likely to prevail if the order were revoked, the Statement of Administrative Action ("SAA")⁴ and the

³ Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 and 18874 (April 16, 1998) (Sunset Policy Bulletin).

⁴ See SAA, H.R. Doc. No. 316, Vol. 1, 103d Cong., 2d Sess. at 890 (1994).

Department's Sunset Policy Bulletin make clear that the Department normally is to select the rate from the original investigation, since that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of the order in place. Further, domestic interested parties assert that, for the purposes of this sunset review, the Department should rely on the rate determined in the original investigation, because the Department has not conducted any administrative reviews examining these programs. Finally, the domestic interested parties argue that respondents' claims that the subsidy programs have ended should be dismissed and, in accordance with its standard practice, the Department should rely on the net countervailable subsidy rate from the original investigation, namely 7.24 percent ad valorem.

TMX, Gravograph and the GOF all argue that since all of the programs found to be countervailable at the time of the original investigation have been terminated and are not likely to be reinstated in the future, the net countervailable subsidy likely to prevail if the order is revoked is zero.

Department's Position

The Department normally will provide to the ITC the net countervailable subsidy that was determined in the original investigation because that is the only calculated rate that reflects the behavior of exporters and foreign governments without the discipline of an order in place. However, this rate may not always be the most appropriate rate.

In the instant case, the benefits from the government equity infusions and other financial assistance to TMX program have been fully allocated prior to the initiation of this sunset review. The allocation period for these non-recurring subsidies, which was determined in the investigation, is 14 years. Using that period, the last year to which any benefits were allocated was 1999. In addition, there is no evidence that additional disbursements have been made since the investigation under these programs. However, as explained above in the "Likelihood of Continuation or Recurrence of Countervailable Subsidy" section of this notice, we determined in the original investigation that the GOF provided a benefit to producers of subject merchandise in France through certain financing from Credit National. Because the Department has not been provided with substantial evidence to support a finding that this benefit has changed, we preliminarily find that the countervailable subsidy rate likely to prevail if the order were revoked is 0.19 percent ad valorem, the rate from the original investigation attributable to the loans from Credit National.

3. Nature of the Subsidy

Consistent with section 752(a)(6) of the Act, the Department is providing the following information to the ITC concerning the nature of the subsidy and whether the subsidy is a subsidy as described in Article 3 or Article 6.1 of the SCM. We note that Article 6.1 of the SCM expired effective January 1, 2000.

The following program falls within the definition of an export subsidy under Article 3 of the SCM.

Certain Financing from Credit National

TMX received financing from Credit National during the period 1976-1985. The “special” loans extended to TMX from Credit National were at a preferential interest rate that is specifically linked to a target level of exports.

The following program is not a subsidy described in Article 3 of the SCM. However, during the period of investigation, it could have been a subsidy described in Article 6.1 of the SCM if the amount of the subsidy exceeds five percent, as measured in accordance with Annex IV of the SCM. It also could have fallen within the meaning of Article 6.1 if it constitutes debt forgiveness or is a subsidy to cover operating losses sustained by an industry or enterprise. However, there is insufficient information on the record of this sunset review in order for the Department to make such a determination. We, however, are providing the ITC with the following program description.

Government Equity Infusions and Other Financial Assistance

The GOF provided funds to Pechiney during 1982-1985 in the form of direct equity investments, conversions of debt into equity, subordinated shareholder investments, loans on terms inconsistent with commercial considerations, and grants. Although the French government made no direct investments in TMX, Pechiney provided equity infusions, preferential loans and government grants to TMX. We determined that TMX was unequityworthy at the time of these equity infusions. Therefore, we determined that the equity infusions were provided on terms inconsistent with commercial considerations and were, therefore, countervailable.

Preliminary Results of Review

As a result of this sunset review, the Department preliminarily finds that revocation of the CVD order would likely to lead to continuation or recurrence of a countervailable subsidy for the reasons set forth in the preliminary results of review. Further, we find the net countervailable subsidy likely to prevail if the order were revoked is 0.19 percent ad valorem.

Recommendation

Based on our analysis of the comments received, we recommend adopting all of the above positions. If these recommendations are accepted, we will publish the preliminary results of review in the Federal Register.

AGREE: _____

DISAGREE: _____

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(Date)